U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL M. SEYL and U.S. POSTAL SERVICE,
POST OFFICE, Billings, MT

Docket No. 98-2319; Submitted on the Record;
Issued March 2, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on May 13, 1997.

On May 15, 1997 appellant, then a 54-year-old clerk, filed a traumatic injury claim alleging that on May 13, 1997 he injured his left knee in the performance of duty. He stated that he was "standing at [a] desk and [my] left knee gave out" and indicated that he may have hyperextended the knee.

In support of his claim, appellant submitted chart notes dated May 15, 1997 which describe the injury as occurring when appellant hyperextended his knee when he started to walk after standing at a desk. The physician stated that appellant related that he "was performing his usual duties two days ago, May 13, 1997. He was standing at the counter when suddenly his left knee began to ache and swell. Appellant has no [history] of a prior knee injury on the left side." The physician diagnosed left knee effusion from either gout or a meniscal injury.

In a form report dated June 18, 1997, a physician diagnosed a medial meniscus tear. The form described the injury as occurring when appellant was kneeling. A form report dated July 2, 1997 listed the injury as taking place "during vehicle inspection."

On July 8, 1997 Dr. John Campbell, a Board-certified orthopedic surgeon, performed arthroscopic surgery on appellant's left knee. After the surgery, he diagnosed "Grade II to III chondromalacia over 60 [percent] of the weightbearing surface of the medial femoral condyle, [and] Grade II chondromalacia of the patella [and] multiple loose bodies."

By decision dated February 11, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he had not established fact of injury. The Office found that appellant's description of the injury as occurring when his knee "gave out" while he stood at his desk described a "coincidence of time and place" rather than a work injury.

By letter date May 4, 1998, appellant requested reconsideration. In a statement describing his injury, he related that prior to the alleged employment incident he was kneeling in a vault and "rocking back and forth on my knees." Appellant stated, "I finished the job then I returned to the office to continue to answer the phone and wait on customers. Shortly after my return I was waiting on a [l]ady and I was moving away from the desk when I felt a sharp pain in my knee and I cried out in pain." He also submitted a statement from a coworker dated June 24, 1997, who indicated that she heard appellant express pain on May 13, 1997 and asked him whether he had hurt his knee on the desk.

The Office prepared a statement of accepted facts and requested that Dr. Campbell provide an opinion regarding whether appellant had sustained an injury to his knee while either standing at a counter or kneeling on the floor.

In a report dated May 26, 1998, Dr. Campbell opined that appellant had hyperextended his left knee at work. He stated:

> "I feel that he certainly had some chondromalacia that was present. The loose bodies could have been fractured off at the time of his hyperextension. As you know many people have some preexisting conditions that are there and predisposes them for injury which occurs in various areas, *i.e.,* in his case as this did at work."
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> "I do [not] think it is pertinent whether he was kneeling or not pertaining to his hyperextension. I think that at the time he felt the pain from his hyperextension and this probably caused his problem…."
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> "I based my opinion on this being a work[-]related accident on [appellant's] history. This is the only way we can do this. I think he had some predisposing degenerative change in his knee and according to him he was doing fine until this specific incident…."

By decision dated June 4, 1998, the Office denied modification of its prior decision. The Office found that appellant did not establish "that he had an accident at work, rather the evidence only demonstrated a coincidence of time and place which does not make an injury compensable."

The Board has duly reviewed the case record in the present appeal and finds that the case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim, including that fact that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.[2]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[3] An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[4] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[5] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statements in determining whether a *prima facie* case has been established.[6] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative force and will stand unless refuted by strong or persuasive evidence.[7]

The Office denied appellant's claim based on its finding that an injury under the Act cannot be caused by the incident alleged by appellant, *i.e.*, that his left knee "gave out" while he was standing at his desk waiting on a customer. The Board has not, however, limited the definition of an injury to preclude the possibility of an injury under the circumstances presented in this case. The term "traumatic injury" is defined by the regulations as follows:

> "*Traumatic injury* means a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. The injury must be caused by a specific event or incident or series of events or incidents within a single workday or work shift."[8]

The action of standing and waiting on a customer, which necessarily involves some movement, would satisfy the requirement that a traumatic injury be caused by an external force as standing imposes stress and strain upon the legs. Further, appellant described the injury as occurring when he started to walk after standing and waiting on a customer. In *Geraldine Sutton*,[9] the Board determined that appellant's action of getting up from a chair at work could be

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[3] *See Elaine Pendelton*, 40 ECAB 1142 (1989).

[4] *Charles B. Ward*, 38 ECAB 667 (1989).

[5] *Tia L. Love*, 40 ECAB 586 (1989).

[6] *Merton J. Sills*, 39 ECAB 572 (1988).

[7] *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

[8] 20 C.F.R. § 10.5(a)(15).

[9] 46 ECAB 1026 (1995).

competent to cause an injury.[10] The finding that standing can produce an injury is in accordance with the long-standing principle that there is no necessity to show special exposure or unusual conditions of employment in the factors producing disability.[11]

In this case, appellant's description of the occurrence of the May 13, 1997 employment incident has not been refuted by any substantial evidence of record. He sought medical treatment two days after the incident and the contemporaneous medical reports contain a history of injury consistent with appellant's account of events. Appellant has also submitted a statement from a witness who heard him cry out in pain by his desk on the date in question. The Board, therefore, finds that the evidence is sufficient to establish that the incident occurred as alleged.

The remaining issue is whether the medical evidence establishes that appellant sustained an injury causally related to the employment incident. In order to establish a causal relationship between the diagnosed condition and any disability therefrom and the employment incident, appellant must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.[12]

In a report dated May 26, 1998, Dr. Campbell opined that appellant had hyperextended his knee at work on May 13, 1997. He noted that appellant had preexisting chondromalacia which may have been worsened by his hyperextension injury. Dr. Campbell's report and the remaining medical evidence of record, is insufficiently rationalized to establish that the knee condition for which he underwent surgery on July 8, 1997 is causally related to the May 13, 1997 employment incident. Although the medical evidence is not sufficient to meet appellant's burden of proof in establishing his claim, it raises an uncontroverted inference of causal relationship sufficient to require further development of the evidence.[13] The case will therefore be remanded to the Office. On remand the Office should refer appellant for a second opinion evaluation to determine whether he sustained an injury resulting from the May 13, 1997 employment incident and, if so, whether his surgery on July 8, 1997 resulted from the injury.

[10] The Board made a similar finding in *Mary Joan Coppolino*, 43 ECAB 988 (1992).

[11] *See Anna Stehl (William Strehl)*, 2 ECAB 74 (1948).

[12] *James Mack*, 43 ECAB 321 (1991).

[13] *John J. Carlone*, 41 ECAB 354 (1989).

The decisions of the Office of Workers' Compensation Programs dated June 4 and February 11, 1998 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, D.C.
March 2, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member